

**SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12458-2023

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

DOUGLAS KIIHIKO WAMBURU

Respondent

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Before:

Ms A E Banks (in the chair)

Mr J Abramson

Dr S Bown

Date of Hearing: 30 June 2023

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**Appearances**

There were no appearances as the matter was dealt with on the papers.

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**JUDGMENT ON AN AGREED OUTCOME**

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## **Allegations**

The allegations against Mr Wamburu made by the Solicitors Regulation Authority (“SRA”) were that while in practice as a solicitor and sole principal of Jesse Douglas & Aaskells Solicitors (“the Firm”):

1. He failed to make an application to the SRA to obtain prior approval to provide legal services through Jesse Douglas Solicitors Limited before the company was incorporated on 26 March 2013. By doing so, the Respondent breached all or any of:
  - 1.1 Rule 1.1(c) of the SRA Practice Framework Rules 2011.
  - 1.2 Principles 2, 6 and 7 of the SRA Principles 2011 (“the Principles”).
2. He failed to notify the SRA that the firm Jesse Douglas Solicitors Limited (“the Company”) of which he was the sole director and shareholder was in serious financial difficulty in that:
  - 2.1 the Company had received a warning of Winding Up Action from HMRC dated 7 June 2017; and / or
  - 2.2 a Petition to wind up the Company was issued by HMRC on 26 September 2017; and / or
  - 2.3 a resolution was passed to wind up the Company and appoint Liquidators on 18 January 2018.

By doing so, the Respondent breached or failed to achieve all or any of:

- 2.4 Principles 6, 7 and 8 of the Principles.
- 2.5 Outcome 10.3 of the SRA Code of Conduct 2011 (“Code of Conduct”).
3. He failed to cooperate with an investigation by the SRA into his conduct in that he failed to:
  - 3.1 respond fully to the SRA’s correspondence including letters dated 8 March 2019, 26 April 2019 and email dated 17 June 2019 requesting information, documents and explanations; and / or
  - 3.2 produce for inspection documents, papers, clients’ files and accounting records to the SRA when requested to do so; and /or
  - 3.3 comply fully with a Production Notice issued on 12 July 2019.

By doing so, the Respondent breached or failed to achieve all or any of:

- 3.4 Principles 2, 6 and 7 of the Principles.
- 3.5 Outcomes 10.8 and 10.9 of the Code of Conduct.

4. Between February 2013 and November 2020 he failed to comply with (or to ensure the Firm's compliance with) the SRA Accounts Rules in that he failed adequately or at all to:
  - 4.1 keep his accounting records up to date and appropriately recorded; and
  - 4.2 undertake reconciliations when they fell due.In so doing, the Respondent breached all or any of:
  - 4.3 Rules 1.2, 29.1, 29.2, 29.4 and 29.12 of the SRA Accounts Rules and
  - 4.4 Principles 6 and 10 of the Principles.
5. In addition, manifest incompetence was alleged as an aggravating factor with respect to each of allegations 1 to 4 above but was not an essential ingredient in proving the allegations.
6. Mr Wamburu admitted all of the allegations he faced.

### **Documents**

7. The Tribunal had before it the following documents:-
  - Rule 12 Statement and Exhibit RN1 dated 12 April 2023
  - Respondent's Answer dated 23 May 2023
  - Statement of Agreed Facts and Proposed Outcome dated 16 June 2023

### **Background**

8. Mr Wamburu was a solicitor having been admitted to the Roll in May 2009. He was the sole Principal of the Firm from February 2013 until it closed in November 2019. He had not held a practising certificate since his previous practising certificate expired on 31 October 2022.

### **Application for the matter to be resolved by way of Agreed Outcome**

9. The parties invited the Tribunal to deal with the Allegations against Mr Wamburu in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

### **Findings of Fact and Law**

10. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Wamburu's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

11. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Wamburu's admissions were properly made.
12. The Tribunal considered the Guidance Note on Sanction (10<sup>th</sup> Edition/June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal assessed Mr Wamburu's conduct as being so serious that there was a need to protect both the public and the reputation of the legal profession from future harm by removing his ability to practise. The Tribunal did not consider that the protection of the public or the protection of the reputation of the legal profession justified striking Mr Wamburu off the Roll. The Tribunal further determined that the protection of the public and the reputation of the profession meant that Mr Wamburu should be subject to indefinite conditions once any period of suspension ended. The Tribunal determined that a suspension of 18 months adequately reflected the seriousness of the misconduct. The Tribunal also found that the restrictions on practice proposed by the parties adequately protected the public and the reputation of the profession from future harm by Mr Wamburu. Accordingly, the Tribunal approved the sanction proposed by the parties.

### **Costs**

13. The parties agreed costs in the sum of £18,000. This was a reduced figure taking into account Mr Wamburu's means. The Tribunal determined that the costs proposed were reasonable and proportionate in the circumstances. Accordingly, the Tribunal ordered that Mr Wamburu pay costs in the agreed sum.

### **14. Statement of Full Order**

1. The Tribunal Ordered that the Respondent, DOUGLAS KIHICO WAMBURU, solicitor, be suspended from practice as a solicitor for the period of 18 months to commence on the 30th day of June 2023 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,000.00.
2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed by the Tribunal as follows:
  - 2.1 The Respondent may not:
    - 2.1.1 Practise as a manager or owner of any authorised body or authorised non-SRA firm;
    - 2.1.2 Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration;
    - 2.1.3 Hold or receive client money, or act as a signatory on any client or office account or have the power to authorise transfers from any client or office account;

3. The Respondent must complete a course from a third-party provider within 18 months covering the Solicitors Accounts Rules and is to provide proof of completion to the SRA within 28 days of completion. 4. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 26<sup>th</sup> day of July 2023  
On behalf of the Tribunal

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**26 JUL 2023**

*J Abramson*

J Abramson, Solicitor Member  
On behalf of A E Banks, Chair

**IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)**

**AND IN THE MATTER OF:**

**SOLICITORS REGULATION AUTHORITY LIMITED**

Applicant

and

**DOUGLAS KIHICO WAMBURU**

Respondent

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**STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME**

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**Introduction**

1. By its application dated 12 April 2023 and the statement made pursuant to Rule 12(2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority Limited ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making five allegations of misconduct against Douglas Kihiko Wamburu ("the Respondent").

**Admissions**

2. The Respondent admits all allegations made against him in the Rule 12 Statement, namely that while in practice as a solicitor and sole principal of Jesse Douglas & Aaskells Solicitors ("the Firm"):

"1. He failed to make an application to the SRA to obtain prior approval to provide legal services through Jesse Douglas Solicitors Limited before the company was incorporated on 26 March 2013. By doing so, the Respondent breached all or any of:

- 1.1. Rule 1.1(c) of the SRA Practice Framework Rules 2011.
- 1.2. Principles 2, 6 and 7 of the SRA Principles 2011 ("the Principles").

2. He failed to notify the SRA that the firm Jesse Douglas Solicitors Limited ("the Company") of which he was the sole director and shareholder was in serious financial difficulty in that:

- 2.1. the Company had received a warning of Winding Up Action from HMRC dated 7 June 2017; and / or
- 2.2. a Petition to wind up the Company was issued by HMRC on 26 September 2017; and / or
- 2.3. a resolution was passed to wind up the Company and appoint Liquidators on 18 January 2018.

By doing so, the Respondent breached or failed to achieve all or any of:

- 2.4. Principles 6, 7 and 8 of the Principles.
- 2.5. Outcome 10.3 of the SRA Code of Conduct 2011 ("Code of Conduct").

3. He failed to cooperate with an investigation by the SRA into his conduct in that he failed to:

- 3.1. respond fully to the SRA's correspondence including letters dated 8 March 2019, 26 April 2019 and email dated 17 June 2019 requesting information, documents and explanations; and / or
- 3.2. produce for inspection documents, papers, clients' files and accounting records to the SRA when requested to do so; and /or
- 3.3. comply fully with a Production Notice issued on 12 July 2019.

By doing so, the Respondent breached or failed to achieve all or any of:

- 3.4. Principles 2, 6 and 7 of the Principles.
- 3.5. Outcomes 10.8 and 10.9 of the Code of Conduct.

4. Between February 2013 and November 2020 he failed to comply with (or to ensure the Firm's compliance with) the SRA Accounts Rules in that he failed adequately or at all to:

- 4.1. keep his accounting records up to date and appropriately recorded; and
- 4.2. undertake reconciliations when they fell due.

In so doing, the Respondent breached all or any of:

- 4.3. Rules 1.2, 29.1, 29.2, 29.4 and 29.12 of the SRA Accounts Rules and
- 4.4. Principles 6 and 10 of the Principles;

5. In addition, manifest incompetence is alleged as an aggravating factor with respect to each of allegations 1 to 4 above but is not an essential ingredient in proving the allegations."

### Agreed facts

3. The following facts and matters, which are relied upon by the SRA in support of the allegations set out at paragraph 2 of this statement, are agreed between the SRA and the Respondent.

### Professional Details

4. The Respondent, who was born September 1967, is a solicitor having been admitted to the Roll on 1 May 2009 (SRA ID: 323162). He was the sole principal of Jesse Douglas & Aaskells Solicitors (SRA ID: 592180) ("the Firm") from 14 February 2013 until it closed on 20 November 2019. At all material times he was the Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA") of the Firm. The Firm's registered head office was 1<sup>st</sup> Floor Suite 104, Kingsley House, Gillingham, ME7 4NT. The Respondent specialised in Mental Health law.
5. The Respondent does not hold a current practising certificate. His last practising certificate was granted on 12 August 2022 and expired on 31 October 2022. It was subject to conditions that the Respondent:
  - 5.1 is not to be a manager or owner of any authorised body or authorised non-SRA firm.
  - 5.2 subject to condition 5.1, may act as a solicitor only as an employee where the role has first been approved by the SRA.
  - 5.3 does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account.
  - 5.4 may not act as COLP or COFA for any authorised body, or Head of Legal Practice ("HOLP") or Head of Finance and Administration ("HOFA") in any authorised non-SRA firm.

### Practising without requisite authorisation

6. The Respondent's conduct came to the attention of the SRA on or about 11 February 2019 when The Insolvency Service ("TIS") wrote a letter to the SRA dated 8 February 2019, reporting that Jesse Douglas Solicitors Limited ("the Company") had been placed into liquidation on 16 January 2018.
7. An investigation into the Respondent's conduct commenced on 12 February 2019.

8. The Certificate of Incorporation filed at Companies House records that the Company was incorporated on 26 March 2013 and that the Respondent was the sole Director and shareholder.
9. The SRA held no record of the Company on its database as an authorised entity, nor of the Respondent having notified the SRA of the existence of the Company. The SRA could not grant authorisation to an entity without it existing in the SRA's records and having been first allocated a SRA number. The Respondent had not obtained prior approval to provide legal services through the Company.
10. The SRA had received an application from the Respondent on 26 September 2012 to:
  - 10.1 be recognised as a sole practitioner pursuant to Rule 4.2(a) of the SRA Practising Regulations 2011 trading under the name 'Jesse Douglas Solicitors';
  - 10.2 approve the Respondent as the designated COLP; and
  - 10.3 approve the Respondent as the designated COFA.
11. The SRA granted this recognition and approval to the Respondent on 14 February 2013. When deciding to approve the Respondent as COLP and COFA the reasons given by the SRA decision maker included:
  - 11.1 He is familiar with the SRA Accounts Rules having been involved in active practice for the last 3 years.
  - 11.2 He will ensure that proper books of account are kept and will oversee the day-to-day management of his firm's accounts.
  - 11.3 He is fully aware of what constitutes office and client money and will implement full systems in order to be able to spot, record and if necessary, report any breaches of the SRA Accounts Rules.
  - 11.4 He has completed training on Management Course Stages 1 and 2 and Understanding of COLPs and COFAs.
12. Notably the SRA had sent a Letter of Advice dated 18 September 2014 to the Respondent. The Respondent had been practising without authorisation in breach of Rule 1.1 of the Practice Framework Rules 2011, which provides you may practice as a solicitor from an office in England and Wales only in a way which is authorised by the SRA. The Respondent had taken instructions from a client outside of his consultancy work when he was not authorised to do so. No further action was taken by the SRA as the Respondent cooperated fully with the SRA and acknowledged his behaviour was a "*mistake*".

### Serious financial difficulties

13. The Investigating Officer also found a record of an investigation the SRA had conducted in respect of the Respondent in 2018. This followed a report from the Legal Aid Agency ("LAA") that it had suspended its contract with the Firm and payments to the Firm on 27 April 2018, due to a breach of the LAA's Supervision Standard Requirements of the 2014 Standard Civil Contract Specification. The Respondent had not reported this fact to the SRA. An Investigation Officer wrote to the Respondent on 21 November 2018 seeking an explanation as to why he had not made a report to the SRA and how the Firm was coping financially as a result of the suspension of the LAA contract. The Respondent replied on 5 December 2018:

*"Following the suspension of the LAA Contract, the firm did not suffer financially since I have been working independently through other law firms mentioned above on a consultancy basis.*

*My firm's main income was from the LAA Contract (98% or more), so when that tap dried up, since I had no employees, I just carried on working as a mental health solicitor on consultancy basis in the law firm mentioned above, then I scaled down the office to two desks only office."*

14. The SRA accepted the Respondent's assurance, closed its investigation on 10 December 2018 and took no further action.

15. The Investigating Officer also gathered information and documentation from the Liquidator's company, Focus Insolvency Group ("FIG"), including:

15.1 The Director's Report produced at the meeting of creditors on 16 January 2018 which showed the Company had incurred substantial liabilities to HMRC;

15.2 The Company had received a warning of Winding Up Action from HMRC dated 7 June 2017 as the sum due to HMRC totalled £166,016.13;

15.3 A Petition to wind up the Company was issued by HMRC on 26 September 2017 at which time the debt due to HMRC was £136,016.13 in respect of outstanding corporation tax, interest and VAT;

15.4 A Court hearing took place on 13 November 2017 at which an adjournment was requested to allow a meeting of shareholders and creditors to be convened to place the Company into a Creditors' Voluntary Liquidation ("CVA").

15.5 At a meeting on 5 January 2018 instructions were given to FIG to assist the Respondent to place the Company into a CVA.

Failure to cooperate with the SRA's investigation

16. A second Investigation Officer wrote to the Respondent on 8 March 2019 requesting information and documentation set out in numbered paragraphs and asking for a reply by 22 March 2019. The Respondent replied the same day but failed to provide copies of the documentation which had been requested. The Investigation Officer asked for a full response by 5pm on 22 March 2019. On 25 March 2019 the Respondent advised the Investigation Officer that he was waiting for information from his accountant and would reply by 12pm on 26 March 2019. He failed to meet this deadline and asked for a further extension of time to 1 April 2019, which was granted.
17. The Respondent sent an email to the Investigation Officer on 1 April 2019 attaching "*some documents that you requested*".
18. On 26 April 2019 the Investigation Officer sent an Explanation With Warning ("EWW") letter to the Respondent, asking for a reply by 28 May 2019.
19. The Respondent requested extensions of time to reply which were granted to first, 3 June 2019 and subsequently to 11 June 2019. On 12 June 2019 the Respondent provided what he described as "*a partial reply*" which he would complete later that day.
20. The Respondent submitted what he described as his "*full response*" on 14 June 2019, attached to which were emails exchanged with his new accountant and bank statements for a Santander account number ending 4643. This response included the following admissions:
  - 20.1 "*...when I registered Jess Douglas Solicitors Ltd, I believe that I may have breached the SRA Principles 2011.*"
  - 20.2 By failing to notify the SRA that the Firm had incurred substantial liabilities to the Crown and that the Company had been placed in liquidation, "*I admit that I breached Principles 2, 6, 7 and 8 of the SRA Principles 2011. I also failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011.*"
21. The SRA's request for information and documentation had not been complied with in full. Details of the outstanding documents were specified in the Investigation Officer's email sent to the Respondent on 17 June 2019, with a response requested by 18 June 2019. No response was received to this email.

22. Consequently, on 12 July 2019 the SRA issued a Production Notice under its statutory powers pursuant to section 44B of the Solicitors Act 1974. The Respondent was required to produce the outstanding information and documents particularised in 18 paragraphs and which included:

22.1 bank reconciliations for the Firm;

22.2 client ledger balances for the period 16 January 2018 to 1 June 2019;

22.3 list of bank accounts associated with the Firm, the Company and Aaskells Solicitors & Advocates.

23. A response was due by 26 July 2019. The Respondent requested an extension of time to 23 August 2019. The Investigation Officer granted an extension to 2 August 2019, but no response was provided by this date. On 9 August 2019 the Investigation Officer advised the Respondent he had until 16 August 2019 to reply. The Respondent replied the same day repeating his request for an extension of time to 23 August 2019, but the Investigation Officer confirmed the deadline remained 16 August 2019. No response was received to this email nor the Production Notice.

24. In the absence of the information and documentation requested from the Respondent, the Investigating Officer commissioned a Forensic Investigation Officer, Mr Franck Jaja, to undertake an onsite investigation in respect of the Respondent, the Firm and the Company.

25. Mr Jaja's investigation began on 12 November 2019. He repeated the request for the Respondent to produce all information and documentation requested in the EWW dated 26 April 2019 and the Production Notice.

#### Solicitors Accounts Rules breaches

26. The Respondent had used the Company as the vehicle to manage the finances of the Firm and to provide legal services. This was done on the basis of the Company trading as the Firm, with the Company operating client and office bank accounts with Santander. Following the liquidation of the Company, the Respondent had continued to practice as the Firm.

27. The Respondent was interviewed on 27 January 2020 by Mr Jaja and a Forensic Investigation Team Leader, Mr Jonathan Chambers. A transcript of that recorded interview has been produced. In that interview the Respondent confirmed:

27.1 That he *"wasn't aware"* it was his responsibility to maintain books of account;

27.2 He supplied receipts to his accountant, Rani Jeyaseelan, for her to prepare the reconciliations. He had never seen nor signed any reconciliation as he *"...never got involved in things accounting"* and *"never had in the office any reconciliation document"* and *"assumed the accountant does everything and that's it"*. The only documents he signed were the self-assessment form for HMRC and year end accounts. He *"didn't keep any"* books of account. The accountant was based at an office in Watford. She had not been provided access to the Company's accounting system, LEAP.

27.3 Mr Jaja had spoken with the accountant and she had emailed him stating she had *"removed all records over three years old when I moved to the Cloud accounting in 2019"*. The Respondent *"wasn't aware"* of this destruction of documents.

27.4 Following the loss of the Firm's Legal Aid Agency ("LAA") contract in January 2018, which was *"99.9%"* of the Firm's income, the Respondent dealt with private immigration work. Clients who instructed the Respondent to deal with their immigration matters paid money into his personal bank account to pay for the legal services he provided, *"because that's my money, because that's my fee. Because I was operating as sole trader"*. Disbursements would be paid by the clients or rarely the Respondent would pay and then be reimbursed by the client. After the Company went into liquidation, he *"didn't really see the need or bring in an accountant because I didn't have money to pay them because already I was you know, my money had dried up I'm thinking"*. The Respondent had not maintained accounting records for any of the immigration cases he had conduct of, estimated to be 10 cases. He had not retained the client files but returned them to the clients.

27.5 With regards to the LAA contract, he stated *"I didn't have the capacity or the knowledge to really understand how to even do these things."* He recruited a supervisor but the work was not done *"satisfactorily"*. He did not notify the

SRA when the LAA contract was terminated as *"I didn't really think that I, I needed to report to the, the SRA. It didn't occur to me at all."*

27.6 The Firm had exceeded the number of cases it had permission from the LAA to undertake. This meant work had been carried out and billed which was not authorised. Any payment made by the LAA for unauthorised work would have to be returned to the LAA. The Respondent understood the LAA's repayment claim to be £165,000.00.

27.7 The Respondent apologised for his *"non-compliance"* in not responding to the Production Notice explaining he *"couldn't handle it mentally at the time"*.

27.8 The Respondent stated he was *"a poor manager. A manager who didn't really have a grasp of managing a firm"* and *"At that time, I didn't really even think about COLP and COFA. I knew those titles are there, but to really sit down and think you know, I'm COLP, I need to report all this. It was like the last thing on my mind"*.

27.9 The Respondent *"did send some money which I was taking from the business and sending home"* to pay for his father's hospital fees in Kenya. When informed there was a nominal ledger for a loan account which it was assumed was a loan to the Respondent from the business, the Respondent commented, *"To be honest, if you ask me I, I don't really, I've never counted how much you know it was, but I did, I had needs of course"*. The Respondent was the only person who had access to the bank account.

28. The books of account were not in compliance with the SRA Accounts Rules 2011. In particular:

28.1 The Respondent failed to produce any accounting records. As a result a comparison of client monies held against client liabilities as at the extraction date of 31 October 2019 was not possible. This meant the extent of any liabilities that the Firm had to its clients could not be calculated.

28.2 The Respondent did not hold the Firm's books of account and indicated that his accountant (Ms Rani Jeyaseelan of MRJ & Co Accountants) did. Ms Jeyaseelan confirmed that she had resigned on 24 February 2016 and did not hold any of the Respondent's accounts. Her resignation letter recorded that the

last client account reconciliation she had conducted was as at 31 May 2015. She stated that the Respondent had failed to submit a VAT return after 30 June 2015.

28.3 Between 16 January 2019 – 11 March 2019 the Respondent had received 12 payments totalling £9,810.00 into his personal bank account (Santander account ending 4643) from clients as evidenced by his personal bank statements. The Respondent was unable to produce these matter files. Consequently, it was not possible to identify whether the money received from clients represented client or office money.

#### Failure to report

29. The Firm breached 5 requirements of its contract with the LAA including practising without a contract compliant supervisor since 1 November 2017. This resulted in the LAA terminating its contract with the Firm on 30 April 2018.
30. The Respondent failed to notify the SRA of the LAA's decision to terminate its contract with the Firm. The LAA confirmed to Mr Jaja in an email sent on 2 December 2019 that an amount of "around £200,000" was owed by the Firm to the LAA in respect of overclaimed legal aid payments. The LAA also confirmed that payments made to the Company were transferred to an account in the name of "Jesse Douglas & Aaskells Solicitors", account number 32379554.
31. The Respondent failed to comply fully with the SRA's request for information and documentation. Mr Jaja requested the documents specified in the Production Notice but these were not produced, save for authorisation to request the bank statements the SRA was seeking from the Respondent's bankers.
32. On 5 January 2020 the Respondent submitted to the SRA a Firm Closure Notification Form which stated the Firm had closed on 20 November 2019.
33. On 23 September 2019 the Respondent was disqualified from acting as a Director from 23 September 2019 until 22 March 2023.
34. On 29 April 2021 the Respondent was adjudged bankrupt. He is now a discharged bankrupt.

### **Non-agreed mitigation**

35. The following mitigation is put forward by the Respondent but is not agreed by the SRA:

35.1 The Respondent points to his personal circumstances during the time of the misconduct including his caring responsibilities for his son

35.2 The Respondent made early partial admissions and promptly upon service of the Rule 12 Statement, full admissions, reflecting his insight into his misconduct. He does not wish to own or manage a law firm again, accepting he does not have the skills to do so.

### **Penalty proposed and Restrictions**

36. Subject to the approval of the Tribunal, it is agreed that the Respondent should be subject to the following sanction:

36.1 A period of suspension of 18 months.

36.2 Indefinite restrictions on practice, with liberty to apply, that the Respondent:

36.2.1 is not a manager or owner of any authorised body or authorised non-SRA firm;

36.2.2 may not act as a COLP, COFA, HOLP or HOFA.

36.2.3 does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account;

36.2.4 is to complete a course from a third-party course provider within 18 months covering the Solicitors Accounts Rules and is to provide proof of completion to the SRA within 28 days of completion.

### **Explanation as to why the proposed penalty would be in accordance with the Tribunal's Sanctions Guidance**

37. The Applicant has considered the relevant factors in the Tribunal's Guidance Note on Sanctions (10<sup>th</sup> edition, June 2022), including the seriousness of the misconduct, the Respondent's culpability, the harm caused or which might reasonably have been foreseen, and aggravating and mitigating factors.

38. The parties agree that a fixed term suspension of 18 months and indefinite restrictions are an appropriate sanction in accordance with the Tribunal's sanctioning guidance, taking into account the seriousness of the misconduct and the admissions made.

39. This assessment takes into account that the level of the Respondent's culpability in respect of the allegations above is high as:

39.1 the conduct cannot be described as spontaneous but was repeated over a period of years and after the Respondent had received a Letter of Advice from the SRA for practising without the requisite authorisation;

39.2 the Respondent had direct control of and responsibility for the circumstances giving rise to the misconduct as the sole principal, COLP and COFA of the Firm and sole Director of the Company;

39.3 the Respondent was an experienced solicitor, with experience of managing a law firm and was aware of the relevant Rules and Principles.

40. Account is also taken of the harm caused and harm that was reasonably foreseeable by the Respondent's misconduct including:

40.1 the impact of the Respondent's misconduct upon his clients and the reputation of the profession. He failed to acquire the correct authorisation from the SRA for his practice, meet his obligations under the Solicitors Accounts Rules over a sustained period of time, declare serious financial difficulties and cooperate fully with his regulator's investigation. His conduct was manifestly incompetent. Such conduct undermines public trust in him as a solicitor and the legal profession.

41. Factors that aggravate the seriousness of the misconduct are that the misconduct:

41.1 was repeated;

41.2 continued over a significant period of time, over 6 years;

41.3 is such that the Respondent knew or ought reasonably to have known that the admitted conduct was in material breach of his obligations to protect the public and the reputation of the legal profession.

42. Factors that mitigate the seriousness of the misconduct itself are that:

42.1 the Respondent has demonstrated genuine insight into his misconduct, including recognition that he does not have the skills to manage a practice; and

42.2 the Respondent has made full admissions. The Respondent did apply for and acquire SRA authorisation in the relevant period to provide legal services albeit as a recognised sole practitioner.

43. The seriousness of the misconduct, involving admissions of failing to act with integrity and manifest incompetence, is such that a reprimand or a financial penalty is not a sufficient sanction or in all the circumstances appropriate. However, neither does the misconduct justify a striking off the Roll.

44. Public confidence would be damaged if a solicitor who was manifestly incompetent was allowed to continue to practice without sanction. There is a need to protect the public and the reputation of the legal profession by removing the Respondent's ability to practice for a fixed period of 18 months and then subject to indefinite restrictions following that. The Respondent may apply for the restrictions to be removed or varied.

45. As set out at paragraphs 31 and 32 of the Tribunal's Guidance, a restriction order may be combined with any other sanction made by the Tribunal. It is agreed that the proposed restrictions are both necessary and proportionate, responding to the particular serious misconduct of the Respondent.

46. The parties consider that the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

**Costs**

47. The Respondent agrees to pay the sum of £18,000 towards the SRA's costs, with payment to commence after the suspension has been served.

48. The Respondent has provided evidence of limited financial means which has been taken into account by the SRA in relation to the proposed order as to costs. That evidence is also placed before the Tribunal. There is a reasonable prospect that once the suspension is lifted, the Respondent's ability to pay those costs will improve.

Signed: .....

Dated this 16<sup>th</sup> day of June 2023

Name: Oliver Sweeney  
Head of Legal & Enforcement  
On behalf of the Applicant

Signed: ..

Dated this 15<sup>th</sup> day of June 2023

Douglas Kihiko Wamburu  
Respondent